

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6720 OF 2017

Ku. Harshali d/o Vasant Rane,
aged about 20 years, Occ. Student,
Plot No.24, Bante Layout, Near Sai Mandir,
Ayodhya Nagar, Nagpur

PETITIONER

...VERSUS...

1. The Scheduled Tribe Certificate Scrutiny Committee,
Gadchiroli, through its Member Secretary,
Camp Area, Gadchiroli, Maharashtra
2. The Scheduled Tribe Certificate Scrutiny Committee,
Gadchiroli, through its Chairman
and Commissioner/ Director,
Tribal Research & Training Institute,
28, Quees Garden, Pune, Maharashtra
3. State of Maharashtra, through
its Principal Secretary, Tribal Development
Department, Mantralaya Extension,
Madam Kama Road, Mumbai,
Maharashtra.
4. National Institute of Technology,
Through its Registrar,
Warangal, Telangana -506 004.....

RESPONDENTS

Shri S.P.Khare, counsel for Petitioner.

Shri A.M.Joshi, Asstt. Govt. Pleader for Respondent nos. 1 to 3

CORAM: R. K. DESHPANDE, AND

ARUN D UPADHYE, JJ.

DATE : 1st AUGUST, 2018.

ORAL JUDGMENT (P.C.)

1] Rule made returnable forthwith.

Heard the matter finally by consent of the learned counsel appearing for the parties.

2] This writ petition challenges the order dated 05.08.2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, invalidating the caste claim of the petitioner for Mana – Scheduled Tribe, which is an entry at Sr. No. 18 in the Constitution (Scheduled Tribes) Order, 1950. The petitioner further claims declaration that her claim be declared as valid and the Committee be directed to issue caste validity certificate in the name of the petitioner. The claim was scrutinized because the petitioner got admission in the engineering course against the seat reserved for Scheduled Tribe.

3] Before the Committee, the petitioner produced 34 documents. Out of it, 18 documents indicated the caste of the petitioner and her blood relatives as Mana. The oldest document is the extract of P-1 register in the name of Balawantrao s/o. Tanu Mana, in which the caste Mana was

entered in the year 1920-23. There are other documents of the blood relatives in which entries were made on 08.02.1963, 21.06.1968 and 23.06.1978. The crucial document is the certificate of validity in the name of Vasant Budhaji Rane, the father of the petitioner, validating his caste for Mana – Scheduled Tribe. Three more validity certificates issued in the name of Vinit, Rahul and Swati, brother and the cousins of the petitioner, validating their claim for Mana – Scheduled Tribe, are also placed on record.

4] The Committee records the findings that though evidence produced on record contain an entry showing the caste of the petitioner and her blood relatives as Mana, the Committee holds that it has no relevance because the synonymous caste, which is not a Scheduled Tribe also show the same entry even prior to Presidential notification. In respect of validity certificates of the blood relatives, the Committee holds that no speaking order was passed while issuing validity certificate and though the enquiry through Police Vigilance was conducted in the case of the father of the petitioner and the cousins, the Police Vigilance Cell gave a remark to take decision as per the judgment of the Apex

Court in C.A. No. 5270 of 2004.

5] We have not been pointed out even a single document showing the caste of the petitioner or her blood relatives other than Mana. The entry of Mana is contained in P-1 register maintained during 1920-23. In the light of the decision of the Apex Court in case of *Anand vrs. Committee for Scrutiny and Verification of Tribe Claims*, reported in 2011 (6) Mh.L.J. (S.C) 919, the greater reliance is required to be placed on pre-independence documents because they furnish a higher degree of probative value to the declaration of status of a caste. In respect of the affinity test, the Apex Court has laid down that a cautious approach has to be adopted and with the migration, modernization and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. The Apex Court holds that the affinity test may not be recorded as litmus test for establishing the link of the applicant with the Scheduled Tribe and it has to be used as corroborative evidence and not as a sole criteria to reject the claim. In view of this decision of the Apex Court, in our view, the Committee could not have

rejected the claim of the petitioner only on the basis of the affinity test and the findings recorded to reject the claim holding that the entries of Mana in the documents produced are synonymous with the entry Mana contained in the Scheduled Tribe Order is without jurisdiction and authority, the same cannot be sustained.

6] It is urged before us that while issuing the caste validity certificates in the names of the father and other blood relatives of the petitioner, the Police Vigilance Cell enquiry was not conducted. Rule 12(2) of the Maharashtra Scheduled Tribes (Regulation of Issuance and Verification of) Certificate Rules, 2003 being relevant, is reproduced below :

"12. Procedure to be followed by Scrutiny Committee.

(2) If the Scrutiny Committee is not satisfied with the documentary evidence produced by the applicant the Scrutiny Committee shall forward the applications to the Vigilance Cell for conducting the school, home and other enquiry."

It is the discretion of the Scrutiny Committee whether the claim is to be forwarded to the Vigilance Cell for conducting school, home and other enquiry. If the Scrutiny Committee is not satisfied with the documentary evidence produced, then only it can forward the documents to the

Vigilance Cell. But if the Committee records its satisfaction on the basis of documentary evidence produced and issues a validity certificate, it cannot question its correctness, legality or binding nature or finality attached to it under sub-section (2) of Section 7 of the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001) on the ground that the Police Vigilance Cell enquiry was not conducted. The Committee, in our view, was wrong in ignoring the caste validity certificates issued in the name of the father of the petitioner validating his claim for 'Mana Scheduled Tribe'.

7] In our view the Committee has, therefore, committed an error in rejecting the claim of the petitioner of Mana - Scheduled Tribe, particularly when the validity certificates issued in the name of the father and other blood relatives of the petitioner conclusively establish her claim.

8] In the result, the this writ petition is allowed and the following order is passed.

- [I] The order dated 05.08.2017 passed by the Scheduled Tribe Certificate Scrutiny Committee, Gadchiroli, is hereby quashed and set aside.
- [II] The claim of the petitioner for Mana – Scheduled Tribe which is an entry at Sr.No. 18 of the Constitution (Scheduled Tribe) Order, 1950, is held to be valid.
- [III] The Committee is accordingly directed to issue caste validity certificate in the name of the petitioner within a period of 15 days from today.
- [IV] The petitioner shall be entitled to continue her education against the seat reserved for Scheduled Tribe candidate.

Rule is made absolute in above terms. No order as to costs.

JUDGE

JUDGE

Rvjalit